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on January 5, 2006

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1/5/06
Date of
Signature

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Customer Number: 000201
Attorney Docket No.: C4273(C)
Appellant: Burgess et al.
Serial No.: 10/690,116
Filed: October 21, 2003
FOR: TUMBLE DRYER DISPENSER
UNUS NO.: 03-0139-UNI

Group: 3749
Examiner: Jiping Lu
Englewood Cliffs, New Jersey 07632
January 5, 2006

BRIEF FOR APPELLANT

MAIL STOP: Appeal Brief - Patents
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Sir:

There are enclosed herewith three (3) copies of an Appeal Brief for Appellant. Please charge \$500.00 to our Deposit Acct. No. 120-1155. Please credit any overpayment or charge any additional fees to Deposit Acct. No. 12-1155.

Three copies of this letter are enclosed.

Respectfully submitted,

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MLH/sm
201-894-2403



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Sir:

This is a Brief on appellant's Appeal from the Examiner's Final Rejection concerning the above-identified application.

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I. REAL PARTY IN INTEREST

Unilever Home & Personal Care USA, Division of Conopco, Inc. is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to appellant, the appellant's legal representative, or assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

III. STATUS OF CLAIMS

There were 24 originally filed claims. Claims 1, 5, 7, 16 and 19 were amended. Claims 24 and 26 were added, with claim 24 subsequently being canceled and claim 26 subsequently being amended. Claims 6, 12, 15, 18 and 20-25 were canceled. Accordingly, claims 1-5, 7-11, 13-14, 16-17, 19 and 26 remain for purposes of Appeal.

IV. STATUS OF AMENDMENTS

Subsequent to the Final Rejection, claim 1 was amended to incorporate the elements of the then pending claims 6 and 25. The latter two claims were then canceled. Claim 26 originally dependent from claim 25 (canceled with the amendment) was now rendered dependent through claim 1. According to the Advisory Action, the Amendment After Final Action was entered for purposes of Appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 relates to a device (1) for treating fabrics in a tumble dryer. The dryer comprises a reservoir (6) for storing a fabric treatment composition and transfer means to expose the fabric treatment composition to air flow generated inside the tumble dryer and/or to directly contact fabrics in the dryer, thereby transferring a portion of the fabric treatment composition into contact with fabrics in the tumble dryer during a tumble drying cycle. The transfer means (300) is characterized as comprising a compressed foam. See the specification at page 2, lines 18-27. The compressed foam requires a compression ratio of 8 or more. See the specification at page 17, lines 25-26. Further, the transfer means comprises an inner flow control member comprising a membrane. See the specification at page 17, lines 15-20. The compressed foam is downstream from the inner flow control member and functions to reduce staining when contacting fabrics. See the specification at page 2 (lines 15-16), page 3 (lines 5-6), page 4 (lines 11-21) and page 17 (lines 15-18).

Claim 2 specifies that the compressed foam of the device is in the form of one or more layers. See the original claim.

Claim 3 identifies the foam as being compressed prior to fitting in the device. See the original claim.

Claim 4 specifies that the compressed foam is a polyurethane foam. See the original claim.

Claim 5 identifies the compressed foam as being a polyester foam. See the original claim.

Claim 7 specifies the compression ratio as being 10 or more. See the original claim.

Claim 8 specifies the compression ratio as being 12. See the original claim.

Claim 9 specifies the compression ratio as being 14. See the original claim.

Claim 10 specifies the initial (pre-compression) pore size of the foam as being 120 or less. See the original claim.

Claim 11 specifies the initial (pre-compression) pore size of the foam as being 100 or less. See the original claim.

Claim 13 specifies the initial (pre-compression) pore size of the foam as being 80 or less. See the original claim.

Claim 14 specifies the initial (pre-compression) pore size of the foam as being 60 or less. See the original claim.

Claim 16 recites a method of treating fabrics in a tumble dryer during multiple tumble dryer cycles. The method comprises attaching a device as defined in claim 1 to the inside of a tumble dryer door and carrying out a tumble drying process with fabrics inside the tumble dryer. See the original claim.

Claim 17 is a method dependent from claim 16 in which the tumble dryer is operated to achieve an elevated temperature of up to 100°C. See the original claim.

Claim 19 covers a kit which comprises a device as defined in claim 1 in combination with a fabric treatment composition optionally provided in a reservoir for use with the device. See original claim 19.

Claim 26 specifies a device wherein the inner flow control member is a polypropylene membrane. See the specification at page 17, lines 18-19.

VI. ISSUES

Are claims 1-5, 7-11, 13-14, 16-17, 19 and 26 obvious under 35 U.S.C. § 103(a) over Compa et al. (U.S. Patent 3,701,202) in view of Miller (U.S. Patent 5,791,801)?

VII. GROUPING OF CLAIMS

All claims stand or fall together with claim 1 being representative of the invention.

VIII. APPELLANT'S ARGUMENTS

An essential feature of the present invention is that of a **compressed** foam. This functions as a transfer means delivering a fabric treatment composition from a reservoir to fabrics for softening in a tumble dryer. Compression has several advantages relative to uncompressed foam. The compressed variety takes less time to charge (fill up) with treatment composition, and thereby is effective more quickly after initial installation. A compressed arrangement stiffens the foam. Staining of the fabric is reduced as a result of compression. Furthermore, compression reduces the size of the pores within the foam thereby enhancing transfer (by capillary action) of fluid composition to the whole foam surface via such pores. This arrangement avoids gravity flow of the fluid treatment composition to a lowermost portion of the foam, thereby potentially leading to excessive amounts on the surface resulting in staining.

Compa et al. was introduced as teaching a method and apparatus for treating fabrics. This is taught to be accomplished through a device 20 for attachment onto the inside of a dryer drum 34. The drum comprises a reservoir 22 for holding a fabric conditioning liquid, inner flow control members 30, and transfer member 84. The latter is utilized to transfer conditioning liquid onto fabrics being rotated inside the drum 34. Transfer member 84 is a foamed polyurethane. Attention was drawn to Figures 4 and 9.

The Examiner in the Final Office Action refused to give any patentable weight to the word "compressed" because it is not a structure. Appellant believes the Examiner is misguided. There can be no doubt that the word "compressed" has structure. To leave no doubt about the term "compressed", appellant further amended claim 1 to define "compressed" by reciting a compression ratio. Apparently the Examiner acquiesced to patentable weight being given to the word "compressed" impliedly from the Advisory Action. Yet in the Advisory Action the Examiner retreated to the position that compression ratios are merely an obvious design choice absent any unexpected results.

Appellant does not consider the claimed compression ratios to be an obvious matter of design choice. Appellant has found that a relatively high level of compression is needed to ensure a non-staining steady-state delivery of fabric treatment composition. Initial burden is on the Examiner to demonstrate that compressed foams are present in the relevant art. Absent a prima facie case, any burden of proof is not upon the appellant. Compa et al. simply does not disclose any compressed foam. This reference does not constitute a prima facie case of obviousness.

Miller was introduced as teaching a polyurethane foam that is “permanently compressed to a predetermined thickness” and for “regulating the rate of fluid release from the applicator”. Yet these are not the only considerations voiced by the reference.

Miller reports a compression ratio of about 3. See column 4, lines 41-42. At this compression ratio Miller advises that the pad has adequate liquid storage capacity to prevent unwanted dripping. The foam at the aforementioned compression ratio remains relatively compressible, so that scrubbing of the body or dabbing of the applicator further compresses the pad, causing release of stored liquid, and further fluid flow into the pad upon release. See column 4, lines 43-47. It would be evident to the skilled technician that a compression ratio much greater than about 3 would be too squeezed to hold any of the disclosed medical liquids. Thus, a pad with a compression ratio of 8 or more as in the presently claimed invention would not be recommended by the reference. This teaches away from the present invention. At the very least, Miller would not present a prima facie case of obviousness to the presently claimed compression ratio.

A second defect of Compa et al. is a failure to disclose an inner flow control member in the form of a membrane upstream from any foam.

In the Advisory Action, the Examiner opined that Compa et al. discloses the equivalent of a membrane as the “inner flow control member comprising the membrane 32 or 84”.

Appellant considers the Examiner’s view misguided regarding the membrane. Element 32 is identified as the surface of container 22. See column 2, line 49. Nothing in the reference gives any indication that structure 22 with surface 32 is a membrane.

The term "membrane" is characterized in appellant's specification as a layer of semi permeable material(s) such as a Goretex® or Accurel® or a woven/non-woven material. Clearly these all are textile type of materials. See the specification at page 4 (lines 27-29) bridging to page 5 (lines 1-2).

According to Webster's New World Dictionary of the American Language (College Edition) published in 1959 the word "membrane" is defined as a fine skin, parchment, a thin soft pliable sheet or layer, especially of animal or vegetable tissue, serving as a covering or lining, as for an organ or part. Element 32 of Compa et al. is not described or illustrated in any of these "membrane" terms.

Apparently the Examiner is influenced by the series of apertures 30 traversing surface 32 of the container 22 as at least functioning equivalent to a membrane. These apertures are not determinative of a "membrane". For instance, appellant reveals a reservoir bottle 22 with pin-holes indicated to be different from an internal membrane. See the present specification at page 16, lines 20-24. Appellant utilizes the term "membrane" in a manner quite distinct from merely being any object with small apertures. The term "membrane" is a textile type material. This manner of structure is not equivalent to surface 32 of the reference.

The Examiner has also proposed that cover 84 of container 22 is the equivalent of a "membrane". A closer inspection indicates that cover 84 is stated to be "of suitable porous material which may be felt, porous synthetic plastic material, such as a foamed polyurethane or the like, which material is designed to serve as a wick for transferring fluid metered through the openings 30." See Compa et al. at column 3, lines 14-19. Structure 84 reads on a compressed foam. This foam does not operate in conjunction with any separate membrane. Foam 84 cannot be cited both for being a foam and also a membrane. This would constitute double inclusion with respect to appellant's claim 1.

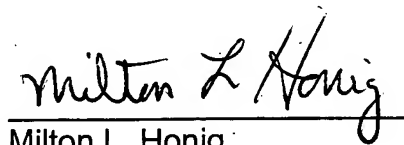
A combination of Compa et al. in view of Miller would not render the instant invention obvious. Neither of the references discloses an inner flow control member that is a membrane. The Examiner has failed to present a prima facie case of obviousness with regard to this aspect of the claims.

Further, Compa et al. fails to disclose a foam that has been compressed. Miller does disclose a compressed foam but the compression ratio of about 3 is substantially different than the claimed compression ratio of 8 or more. Indeed, Miller teaches away from highly compressed pads because this reference requires the pad to have adequate liquid storage capacity to prevent unwanted dripping. Within the structural context of Miller, a pad with substantially higher than about 3 compression ratio would be deemed inferior if not inoperative.

Still further, those skilled in the art would hardly incorporate teachings of a liquid applicator for surgery (Miller) into a mechanism for distributing textile conditioners (Compa et al.). These technical fields are simply too distant. Based on the foregoing considerations, the combination of Compa et al. in view of Miller would not render the instant invention obvious.

In view of the foregoing comments, appellant requests the Board of Appeals and Interferences to reverse the Examiner's rejection and order the case to issue.

Respectfully submitted,



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201-894-2403

IX. CLAIMS APPENDIX

1. A device for treating fabrics in a tumble dryer comprising a reservoir for storing a fabric treatment composition and transfer means to expose fabric treatment composition from the reservoir to airflow generated inside the tumble drier and/or to directly contact fabrics in the dryer, thereby transferring a portion of the fabric treatment composition into contact with fabrics in the tumble dryer during a tumble drying cycle; characterised in that the transfer means comprises compressed foam having a compression ratio of 8 or more and an inner flow control member comprising a membrane, the compressed foam being downstream from the inner flow control member and functioning to reduce staining when contacting fabrics.
2. A device according to claim 1 wherein the compressed foam is in the form of one or more layers.
3. A device according to claim 1 wherein the foam is compressed prior to fitting in the device.
4. A device according to claim 1 wherein the compressed foam is a polyurethane foam.
5. A device according to claim 1 the compressed foam is a polyester foam.
7. A device according to claim 1 where the compression ratio is 10 or more.
8. A device according to claim 1 wherein the compression ratio is 12.
9. A device according to claim 1 wherein the compression ratio is 14.

10. A device according to claim 1 wherein the initial (pre-compression) pore size of the foam is 120 or less.

11. A device according to claim 1 wherein the initial (pre-compression) pore size of the foam is 100 or less.

13. A device according to claim 1 wherein the initial (pre-compression) pore size of the foam is 80 or less.

14. A device according to claim 1 wherein the initial (pre-compression) pore size of the foam is 60 or less.

16. A method of treating fabrics in a tumble dryer during multiple tumble drying cycles comprising attaching a device according claim 1 to the inside of a tumble dryer door and carrying out a tumble drying process with fabrics inside the tumble dryer.

17. A method according to claim 16 in which the tumble drier is operated to achieve an elevated temperature of up to 100°C.

19. A kit comprising a device according to claim 1 in combination with a fabric treatment composition optionally provided in a reservoir for use with said device.

26. A device according to claim 1 wherein the inner flow control member is a polypropylene membrane.

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDINGS APPENDIX

None.